

REMARKS

This Amendment is responsive to the Office Action mailed November 17, 2004. Accordingly, the Amendment is accompanied by a petition to extend the time for response by 3 months, together with the required fee.

Section 112 Rejections

Claims 15 and 16 stand rejected under 35 USC §112, second paragraph, because these claims depend from cancelled claim 2. Accordingly, claim 15 has been appropriately amended.

Restriction/Constructive Election

The Office Action states that claims 36, 38 - 39, and 42 - 43 (hereinafter "Group 2"), are independent or distinct from claims 1 - 35, 37, 40 - 41, and 44 - 48 (hereinafter "Group 1"), because the group 1 claims pertain to an interface for controlling an apparatus by hand, and the group 2 claims pertain to an interface for controlling an apparatus by rotating a ball, or by moving a device over a diffusely reflective surface. Therefore, the group 1 claims are considered to have been constructively elected, so that the group 2 claims have been withdrawn from consideration. Applicant respectively traverses the withdrawal of the group 2 claims from consideration in the present application.

In a response to Applicants' contention that claim 36 was an original claim, the examiner disagreed because the original claim did not recite the limitation of "the hand surface." However, please note that original claim 41 did recite such a limitation, as follows:

"The method of claim 40, wherein said reflecting surface is a portion of a human hand."

Accordingly, original claim 41 identified and claimed the surface of a human hand as being a reflecting surface, and the restriction requirement must therefore be withdrawn.

Section 103 Rejections

Claims 1, 3 - 14, 17 - 32, and 46 - 48 stand rejected under 35 USC §103(a) as being unpatentable over Kokubo, U.S. Patent No. 5,530,456 ("Kokubo") in view of Nolte et al., U.S. Patent No. 6,342,721 ("Nolte"). In addition, claims 1, 3 - 14, 17 - 32, 35, 44, and 46 - 48 stand rejected under the same statute as being unpatentable over Bidiville et al., U.S. Patent No. 5,288,993 ("Bidiville") in view of Nolte. The allegations are nearly identical to those made against claims 1 and 17 - 32 in the previous Office Action, mailed January 23, 2004, and have all been responded to.

Applicants responded to the rejections by pointing out, among other things, that Kokubo, Bidiville and Piot all produce a signal representative of the position of the image, so that they all require computational analysis of image positions to discern movement, and that modifying these references to employ a photo-emf sensor would alter their principles of operation, in violation of MPEP 2143.01.

The responding statement in the Office Action, that "all these references teach the same sensing function," is both factually incorrect and nonresponsive to the point raised.

The statement is factually incorrect because the claims as amended all carefully explicate a particular sensor (or material) that produces a signal directly responsive to the change in or motion of a pattern or distribution of light. Kokubo, Bidiville and Piot all sense position and compute movement. Sensing position and computationally discerning movement is by no stretch of meaning the same as sensing motion.

The statement is nonresponsive because it fails to address Applicants' point that it would alter the principle of operation of Kokubo, Bidiville, and Piot to incorporate a photo-emf detector therein, so that the rejections are contrary to the requirements of MPEP 2143.01.

Accordingly, it is respectfully submitted that continuing to maintain the rejections on the stated grounds would be improper, and the examiner is therefore respectfully requested either to formulate proper grounds or allow the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Garth Janke', written over the printed name.

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